

APPEAL, CLOSED, ECF, PRIOR

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CRIMINAL DOCKET FOR CASE #: 1:05-cr-01246-RO-1

Case title: USA v. Kaporulja
Magistrate judge case number: 1:05-mj-01257-UA

Date Filed: 11/17/2005
Date Terminated: 06/29/2007

Assigned to: Judge Richard Owen

Defendant (1)

Sergei Kaporulja
TERMINATED: 06/29/2007

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Pending Counts

18:1341.F 18:1349 FRAUDS AND
SWINDLES
(1)

Disposition

Imprisonment: 51 months. Supervised Release: 3
years.

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Disposition

**Highest Offense Level
(Terminated)**

None

Complaints

18:371:CONSPIRACY TO
COMMIT MAIL AND HEALTH
CARE FRAUD.

Disposition

Plaintiff

USA

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Date Filed	#	Docket Text
07/14/2005	1	COMPLAINT as to Sergei Kapirulja (1) in violation of 18 U.S.C. 371. (Signed by Judge James C. Francis) (gq,) [1:05-mj-01257-UA] (Entered: 07/27/2005)
07/26/2005		Arrest of Sergei Kapirulja. (gq,). [1:05-mj-01257-UA] (Entered: 07/27/2005)
07/26/2005		Attorney update in case as to Sergei Kapirulja. Attorney Winston Lee for Sergei Kapirulja added. (gq,) [1:05-mj-01257-UA] (Entered: 07/27/2005)
07/26/2005		Minute Entry for proceedings held before Judge Douglas F. Eaton :Initial Appearance as to Sergei Kapirulja held on 7/26/2005. Deft appears with CJA atty Winston Lee. AUSA Alexander Southwell present for the gov't. Detention on consent without prejudice. Preliminary Examination set for 8/25/2005 10:00 AM before Judge Unassigned. (gq,) [1:05-mj-01257-UA] (Entered: 07/27/2005)
07/26/2005	5	CJA 20 as to Sergei Kapirulja: Appointment of Attorney Winston Lee for Sergei Kapirulja.. (Signed by Judge Douglas F. Eaton on 8/9/05) The CJA Office has mailed the original to the attorney and sent a copy to the case file.(pa,) [1:05-mj-01257-UA] (Entered: 08/12/2005)
08/02/2005	4	NOTICE OF ATTORNEY APPEARANCE: Michael A. O'Connor appearing for Sergei Kapirulja. (kwi,) [1:05-mj-01257-UA] (Entered: 08/03/2005)
08/11/2005		Minute Entry for proceedings held before Judge Andrew J. Peck :Detention Hearing as to Sergei Kapirulja held on 8/11/2005 with Retained Attorney Michael O'Connor and AUSA Alexander Southwell by Seetha Ramachandran for the government. \$100,000 PRB; 3 FRP'S; Travel Limited to SDNY/EDNY; Surrender Travel Documents (&No New Applications); Regular Pretrial Supervision; Deft to be Released upon until All Conditions are Met (Probably will be Today) (dif,) Modified on 8/15/2005 (dif,). [1:05-mj-01257-UA] (Entered: 08/15/2005)
08/11/2005	6	PRB APPEARANCE Bond Entered as to Sergei Kapirulja in amount of \$ 100,000 PRB, 3 FRP'S; Travel Limited to SDNY/EDNY; Surrender Travel Documents (&No New Applications); Regular Pretrial Supervision; Deft to be Released upon All Conditions to be Met (Probably will be Today) (dif,) [1:05-mj-01257-UA] (Entered: 08/15/2005)
08/11/2005	7	ADVICE OF PENALTIES AND SANCTIONS as to Sergei Kapirulja. (dif,) [1:05-mj-01257-UA] (Entered: 08/15/2005)
08/25/2005	8	ORDER TO CONTINUE IN THE INTEREST OF JUSTICE as to Sergei Kapirulja. Time excluded from 8/25/05 until 9/26/05. . (Signed by Judge Ronald L. Ellis on 8/25/05)(md,) [1:05-mj-01257-UA] (Entered: 08/29/2005)
08/25/2005	9	AFFIRMATION of Alexander H. Southwell in Support as to Sergei Kapirulja re: 8 Order to Continue - Interest of Justice. (md,) [1:05-mj-01257-UA] (Entered: 08/29/2005)
09/20/2005	10	ORDER as to Sergei Kapirulja that the geographical bail limitations be modified to permit defendant Kaparulja to travel freely within the states of New York, New Jersey and Pennsylvania. (Signed by Judge Andrew J. Peck on 9/20/05)(vb,) [1:05-mj-01257-UA] (Entered: 09/22/2005)
09/22/2005	11	AFFIRMATION of Alexander Southwell in Support by USA as to Sergei Kapirulja RE: For the request of continuance until 10/26/05.(kwi,) [1:05-mj-01257-UA] (Entered: 09/26/2005)
09/26/2005		ORDER TO CONTINUE IN THE INTEREST OF JUSTICE as to Sergei Kapirulja re: 11 Affirmation in Support filed by USA,. Time excluded from 9/26/05 until 10/26/05. Follows oral order of 9/26/05.. (Signed by Judge Henry B. Pitman on 9/26/05)(kwi,) [1:05-mj-01257-UA] (Entered: 09/26/2005)
10/25/2005	12	AFFIRMATION of Alexander Southwell in Support by USA as to Sergei Kapirulja RE: For the request of continuance until 11/28/05.(kwi,) [1:05-mj-01257-UA] (Entered: 10/27/2005)
10/26/2005		ORDER TO CONTINUE IN THE INTEREST OF JUSTICE as to Sergei Kapirulja re: 12 Affirmation in Support filed by USA,. Time excluded from 10/26/05 until

		11/28/05. Follows oral order of 10/26/05.. (Signed by Judge Frank Maas on 10/25/05)(kwi,) [1:05-mj-01257-UA] (Entered: 10/27/2005)
11/17/2005		Case Designated ECF as to Sergei Kapirulja.(jm,) (Entered: 12/05/2005)
11/17/2005	<u>13</u>	NOTICE OF INTENT TO FILE an Information by U.S.A. as to Sergei Kapirulja. (kw,) (Entered: 12/07/2005)
11/17/2005	<u>14</u>	INFORMATION (Felony) filed as to Sergei Kapirulja (1) count(s) 1. (kw,); Microfilm 12/6/05 12pm. Modified on 12/15/2005 (bw,). (Entered: 12/07/2005)
11/17/2005	<u>15</u>	WAIVER OF INDICTMENT by Sergei Kapirulja. (kw,) (Entered: 12/07/2005)
11/17/2005		Minute Entry for proceedings held before Judge Barbara S. Jones :Arraignment as to Sergei Kapirulja (1) Count 1 held on 11/17/2005. Defendant present with attorney Michael O'Connor for Barry Shulman. AUSA Alexander Southwell present. Court reporter present. Government will file an information. Defendant waives indictment. The information is ordered filed. Defendant is arraigned and enters a plea of not guilty plea to the information. Government will produce discovery. Next pretrial conference will be held on 12/19/05 at 4:30 p.m. Under the interest of justice exception of the Speedy Trial Act, the period of time from 11/17/05 to 12/19/05 is excluded to allow the government to produce discovery and the defendant time to review it. These reasons outweigh the interests of the public and the defendant in a speedy trial. Defendant continued on bail. (kw,) Modified on 12/7/2005 (kw,). (Entered: 12/07/2005)
11/17/2005		Minute Entry for proceedings held before Judge Barbara S. Jones : Plea entered by Sergei Kapirulja (1) Count 1 Not Guilty. (kw,) (Entered: 12/07/2005)
11/17/2005		ORAL ORDER as to Sergei Kapirulja. Time excluded from 11/17/2005 until 12/19/05. As to Sergei Kapirulja, Pretrial Conference set for 12/19/2005 at 04:30 PM before Judge Barbara S. Jones. (Signed by Judge Barbara S. Jones on 11/17/2005)(kw,) (Entered: 12/07/2005)
12/27/2005	<u>16</u>	ORDER as to Sergei Kapirulja. It is hereby ORDERED that the pretrial conference scheduled for 12/19/05 is adjourned to 1/5/06 at 3:00 p.m. to allow the parties to continue discussions relating to a possible disposition in this matter. For this reason, in the interest of justice, the period of time from 12/27/05 to 1/5/06 is excluded pursuant to 18 U.S.C. Section 3161(h)(8)(A). (Signed by Judge Barbara S. Jones on 12/27/05)(bw,) (Entered: 12/28/2005)
01/05/2006		Minute Entry for proceedings held before Judge Barbara S. Jones :Status Conference as to Sergei Kapirulja held on 1/5/2006. Deft present w/atty Michael O'Connor for Barry Shulman. AUSA Alexander Southwell present. Court reporter present. Govt has produced discovery. Defense counsel informs the court that he intends to file a Miranda motion, will be requesting documents requiring a subpoena, and has some issues to resolve surrounding a transcript. Deft's motion is due on 1/27/06. Govt's opposition is due on 2/27/06. Deft's reply, if any, is due by 3/6/06. If the govt needs more time to file its opposition, the govt can put in a letter requesting more time. If a hearing is needed, that hearing will take place on 4/20/06 at 10 a.m., and trial will begin on 4/11/06 at 10 a.m. If no hearing is needed, trial will begin on 4/10/06 at 10 a.m. The govt's case is estimated to take about 1 – 1 weeks. Under the interest of justice exception of the Speedy Trial Act, the period of time from 1/5/06 to 4/10/06 is excluded to file and prepare motions, prepare for trial. These reasons outweigh the interests of the public and the deft in a speedy trial. Deft continued on bail. (bw,) (Entered: 01/20/2006)
01/05/2006		ORAL ORDER as to Sergei Kapirulja. Time excluded from 1/5/06 until 4/10/06. Motions due by 1/27/2006. Responses due by 2/27/2006. Replies due by 3/6/2006. Jury Trial set for 4/11/2006 10:00 AM before Judge Barbara S. Jones. Pretrial Conference set for 4/10/2006 10:00 AM before Judge Barbara S. Jones.(bw,) (Entered: 01/20/2006)
03/16/2006	<u>17</u>	ENDORSED LETTER as to Sergei Kapirulja addressed to Judge Jones from AUSA Alexander H. Southwell dated 3/15/06 re: submitted to request, jointly with the deft, that the trial scheduled to commence Monday, 4/10/06, be adjourned. The Govt requests that the time between today and 6/12/06 be excluded under the Speedy Trial

		clock. Judge Endorsed – Application granted. Trial is adjourned to June 12, 2006 at 10AM. In addition, proposed jury instructions, voire dire questions, and in limine motions are due by June 5, 2006. In the interest of justice for the reasons stated below, Speedy trial time is excluded from March 16, 2006 to June 12, 2006 pursuant to 18 U.S.C. Section 3161(h)(8)(A). (Signed by Judge Barbara S. Jones on 3/16/06)(bw,) (Entered: 03/16/2006)
03/16/2006		Set/Reset Deadlines/Hearings as to Sergei Kapirulja: Motions due by 6/5/2006. Jury Trial set for 6/12/2006 10:00 AM before Judge Barbara S. Jones.(bw,) (Entered: 03/16/2006)
06/05/2006	<u>18</u>	Request To Charge by USA as to Sergei Kapirulja. (Southwell, Alexander) (Entered: 06/05/2006)
06/08/2006	<u>19</u>	NOTICE OF CASE REASSIGNMENT as to Sergei Kapirulja, to Judge Richard Owen. Judge Barbara S. Jones no longer assigned to the case. (laq,) (Entered: 06/12/2006)
06/09/2006		Minute Entry for proceedings held before Judge Richard Owen :Pretrial Conference as to Sergei Kapirulja held on 6/9/2006. Deft present w/atty Barry Schulman. AUSA present. Interpreter present. PTC held. Trial set for 7/24/06. Bail continued. (bw,) (Entered: 06/12/2006)
06/09/2006		ORAL ORDER as to Sergei Kapirulja. Ready for Trial by 7/24/2006.(bw,) (Entered: 06/12/2006)
07/24/2006		Minute Entry for proceedings held before Judge Richard Owen :Voir Dire begun on 7/24/2006 Sergei Kapirulja (1) on Count 1. Deft present w/atty Barry Shulman. AUSAs present. Interpreter present. Trial begins – Jury Selection begins. Jurors impaneled and sworn. Trial continues 7/25/06. Bail continued. (bw,) (Entered: 07/26/2006)
07/24/2006		Minute Entry for proceedings held before Judge Richard Owen :Jury Selection as to Sergei Kapirulja held on 7/24/2006. (bw,) (Entered: 07/26/2006)
07/24/2006		Jury Impaneled as to Sergei Kapirulja. (bw,) (Entered: 07/26/2006)
07/24/2006		Minute Entry for proceedings held before Judge Richard Owen :Jury Trial as to Sergei Kapirulja held on 7/24/2006. (bw,) (Entered: 07/26/2006)
07/25/2006		Minute Entry for proceedings held before Judge Richard Owen :Jury Trial as to Sergei Kapirulja held on 7/25/2006. Deft present w/atty Barry Shulman. AUSA Alexander Southwell and Devlin Brown present. Interpreter present. Trial continues; 7/26/06 Trial continued. Bail continued. (bw,) (Entered: 07/26/2006)
07/26/2006		Minute Entry for proceedings held before Judge Richard Owen :Jury Trial as to Sergei Kapirulja held on 7/26/2006 (pr,) (Entered: 07/28/2006)
07/27/2006		Minute Entry for proceedings held before Judge Richard Owen :Jury Trial as to Sergei Kapirulja held on 7/27/2006. Juror deliberations. Jury verdict reached. Deft. guilty as charged. PSI ordered. Sentence date 11/13/06 @ 4:30pm. Deft. remanded, bail revoked. (pr,) (Entered: 07/28/2006)
07/27/2006		JURY VERDICT as to Sergei Kapirulja (1) Guilty on Count 1. (pr,) (Entered: 07/28/2006)
07/27/2006		ORDER FOR PRE-SENTENCE INVESTIGATION REPORT as to Sergei Kapirulja(by Judge Richard Owen on 7/27/06)(pr,) (Entered: 07/28/2006)
07/27/2006		Set/Reset Hearings as to Sergei Kapirulja: Sentencing set for 11/13/2006 04:30 PM before Judge Richard Owen..(pr,) (Entered: 07/28/2006)
08/03/2006	<u>20</u>	FIRST MOTION for Acquittal <i>and or New Trial</i> . Document filed by Sergei Kapirulja. Return Date set for 11/13/2006 10:00 AM. (Schulman, Barry) (Entered: 08/03/2006)
08/15/2006	21	TRANSCRIPT of Proceedings as to Sergei Kapirulja held on 7/24/2006 before Judge Richard Owen. (jmi,) (Entered: 08/15/2006)

08/21/2006	22	TRANSCRIPT of Proceedings as to Sergei Kapirulja held on July 25,26, &27 of 2006 before Judge Richard Owen. (kco,) (Entered: 08/21/2006)
08/25/2006	23	TRANSCRIPT of Proceedings as to Sergei Kapirulja held on 7/26/06 before Judge Richard Owen. (cd,) (Entered: 08/25/2006)
12/11/2006	<u>24</u>	SENTENCING MEMORANDUM by USA as to Sergei Kapirulja. (Attachments: # <u>1</u> Exhibit Ex. A -- Loss Restitution Chart)(Southwell, Alexander) (Entered: 12/11/2006)
01/12/2007		ORAL ORDER re: Substitution of Counsel (on Disposition Sheet) as to Sergei Kapirulja. Dft pres w/atty John Rodriguez (CJA) for today, for Retained cnsl Barry Schulman. (Signed by Judge Debra C. Freeman on 1/12/07)(ja) (Entered: 01/18/2007)
01/12/2007		Minute Entry for proceedings held before Judge Richard Owen :Status Conference as to Sergei Kapirulja held on 1/12/2007. Dft present with atty Barry Shulman. AUSA Alexander Southwell present. Interpreter present. Conference held. Court grants dft's motion to have his counsel relieved. CJA to be appointed. Sentence adjourned to 2/23/2007 at 2:30pm. Dft remanded. (jar) (Entered: 01/23/2007)
01/12/2007		ORAL ORDER as to Sergei Kapirulja Sentencing set for 2/23/2007 02:30 PM before Judge Richard Owen. (Signed by Judge Richard Owen on 1/12/2007)(jar) (Entered: 01/23/2007)
01/12/2007	25	CJA 20 as to Sergei Kapirulja: Appointment of Attorney John Michael Rodriguez for Sergei Kapirulja. (Signed by Judge Debra C. Freeman on 2/6/07) CJA Office Mailed the Original to Attorney, and Sent Copy to File.(sac) (Entered: 02/08/2007)
02/23/2007	26	CJA 23 Financial Affidavit by Sergei Kapirulja. (Signed by Magistrate Judge Debra C. Freeman on 1/12/07) (bw) (Entered: 02/23/2007)
02/23/2007		Minute Entry for proceedings held before Judge Richard Owen :Status Conference as to Sergei Kapirulja held on 2/23/2007. Dft present with atty John Rodriguez. AUSA present. Interpreter present. Sentence adjourned without date. Court will advise counsel when new date is scheduled. Dft remanded. (jw) (Entered: 03/02/2007)
03/01/2007	<u>27</u>	MEMORANDUM AND ORDER as to Sergei Kapirulja. The C.J.A. attorney assigned to this case, John Michael Rodriguez, is hereby ordered substituted and the representation of the dft is assigned to Margaret Shalley. (Signed by Judge Richard Owen on 3/1/07)(bw) (Entered: 03/02/2007)
03/01/2007		Attorney update in case as to Sergei Kapirulja. Attorney John Michael Rodriguez terminated. (bw) (Entered: 03/02/2007)
03/01/2007	28	CJA 20 as to Sergei Kapirulja: Appointment of Attorney Margaret M. Shalley for Sergei Kapirulja. (Signed by Judge Richard Owen on 3/1/07) CJA Office Mailed the Original to Attorney, and Sent Copy to File.(sac) (Entered: 03/07/2007)
03/15/2007	29	TRANSCRIPT of Sentencing Proceedings as to Sergei Kapirulja held on 2/23/07 before Judge Richard Owen. (tro) (Entered: 03/15/2007)
04/19/2007		Minute Entry for proceedings held before Judge Richard Owen :Pretrial Conference as to Sergei Kapirulja held on 4/19/2007. Dft pres w/atty Margaret Shalley. AUSA pres. Interpreter pres. CJA atty on duty today Neil Checkman pres. Conference regarding present counsel's conflict of interest. CJA atty Neil Checkman not assigned. New counsel to be assigned in Magistrate's court on Monday 4/23/07. Dft remanded. (ja) (Entered: 04/24/2007)
06/22/2007	<u>30</u>	MOTION for Leave to File Letter from uncalled witness. Document filed by Sergei Kapirulja. (Attachments: # <u>1</u> Exhibit Letter from uncalled witness)(Nooter, Thomas) (Entered: 06/22/2007)
06/22/2007	<u>31</u>	SENTENCING MEMORANDUM by Sergei Kapirulja. (Attachments: # <u>1</u> Exhibit Letters in support of sentence)(Nooter, Thomas) (Entered: 06/22/2007)
06/22/2007	<u>32</u>	SENTENCING MEMORANDUM by Sergei Kapirulja. (Nooter, Thomas) (Entered: 06/22/2007)

06/22/2007		Minute Entry for proceedings held before Judge Richard Owen :Sentencing held on 6/22/2007 for Sergei Kaporulja (1) Count 1. (ja) (Entered: 07/03/2007)
06/26/2007	<u>34</u>	NOTICE OF APPEAL by Sergei Kaporulja from <u>33</u> Judgment. (nd) (Entered: 07/03/2007)
06/26/2007		Appeal Remark as to Sergei Kaporulja re: <u>34</u> Notice of Appeal – Final Judgment. \$455.00 APPEAL FILING FEE DUE. (nd) (Entered: 07/03/2007)
06/29/2007	<u>33</u>	FILED JUDGMENT IN A CRIMINAL CASE as to Sergei Kaporulja (1). The defendant Sergei Kaporulja was found guilty on Count(s) 1 after a plea of not guilty, Imprisonment: 51 months. The defendant is remanded to the custody of the U.S. Marshal. Supervised Release: 3 years. SA: \$100.00. Restitution: \$230,380.13. (Signed by Judge Richard Owen on 6/29/07)(ja) (Entered: 07/03/2007)
07/02/2007		Judgment entered in money judgment book as #07,1308 as to Sergei Kaporulja in the amount of \$ 230,480.13, re: <u>33</u> Judgment. (dt) (Entered: 07/12/2007)
07/03/2007		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Sergei Kaporulja to US Court of Appeals re: <u>34</u> Notice of Appeal – Final Judgment. (nd) (Entered: 07/03/2007)
07/03/2007		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Sergei Kaporulja re: <u>14</u> Information – Felony, <u>16</u> Order, Set Hearings,, <u>18</u> Request to Charge, <u>17</u> Endorsed Letter,, <u>31</u> Sentencing Memorandum, <u>24</u> Sentencing Memorandum, <u>30</u> MOTION for Leave to File Letter from uncalled witness,, <u>13</u> Notice of Intent to File Information, <u>19</u> Notice of Case Assignment/Reassignment, <u>20</u> FIRST MOTION for Acquittal <i>and or New Trial.</i> , <u>15</u> Waiver of Indictment, <u>34</u> Notice of Appeal – Final Judgment, <u>32</u> Sentencing Memorandum, <u>33</u> Judgment, <u>27</u> Order, were transmitted to the U.S. Court of Appeals. (nd) (Entered: 07/03/2007)
07/12/2007		USCA SCHEDULING ORDER as to Sergei Kaporulja related to <u>34</u> Notice of Appeal – Final Judgment filed by Sergei Kaporulja, USCA Case Number 07–2873. Defendant Brief due by 8/10/2007. Government Brief due by 9/10/2007. (nd) (Entered: 07/12/2007)
07/25/2007	<u>35</u>	NOTICE OF ATTORNEY APPEARANCE Arlo Devlin–Brown appearing for USA. (Devlin–Brown, Arlo) (Entered: 07/25/2007)
08/01/2007	36	TRANSCRIPT of Proceedings as to Sergei Kaporulja held on 06/22/07 before Judge Richard Owen. (es) (Entered: 08/01/2007)
04/30/2008	37	TRANSCRIPT of Proceedings as to Sergei Kaporulja held on 6–9–06 before Judge Richard Owen. (sjo) (Entered: 04/30/2008)
05/21/2008	<u>38</u>	First Supplemental ROA Sent to USCA (Index). Notice that the Supplemental Index to the record on Appeal as to Sergei Kaporulja re: <u>34</u> Notice of Appeal – Final Judgment USCA Case Number 07–2873–cr, 3 Copies of the index, Certified Supplemental Clerk Certificate and Certified Docket Sheet were transmitted to the U.S. Court of Appeals. (tp) (dt). (Entered: 05/21/2008)
05/22/2008	0	First Supplemental ROA Sent to USCA (File). Supplemental Indexed record on Appeal Files as to Sergei Kaporulja re: <u>34</u> Notice of Appeal – Final Judgment USCA Case Number 07–2873–cr, were transmitted to the U.S. Court of Appeals. (tp) Modified on 5/22/2008 (tp). (Entered: 05/22/2008)
07/14/2008		First Supplemental ROA Returned. Supplemental Indexed record on Appeal Files as to Sergei Kaporulja re: Supplemental ROA Sent to USCA – File, USCA Case Number 07–2873, returned from the U.S. Court of Appeals. (nd) (Entered: 07/28/2008)